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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/699,508
Filing Date: October 31, 2003
Appellant(s): WOLLENBERG ET AL.

Michael E. Carmen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 9, 2006 appealing from the Office action mailed November 4, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal: There is currently an appeal to the Board in related application serial numbers 10/699,507 and 10/699,510.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUNDS OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. The pending rejections of the claims under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims in co-pending application

serial numbers 10/779,422, 10/699,529, 10/699,507 and 10/699,509 are not presented for review by the Board. Therefore, these rejections will not be set forth herein.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0123650	Kolosov et al.	7-2004
2003/0100453	O'Rear	5-2003
2003/0171226	Gatto	9-2003
5,236,610	Perez et al	8-1993
6,541,271	McFarland et al	4-2003
EP 1,233,361	Smrcka et al.	8-2002
5,993,662	Garr et al	11-1999

(9) Grounds of Rejection

1. The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-6, 10 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolosov et al (US 2004/0123650) in view of O'Rear (US 2003/0100453) or Gatto (US 2003/0171226).

Kolosov et al teach of a high throughput testing method and apparatus for the screening of a library of material samples. The method and apparatus involve combinatorial chemistry that refers to the synthesis of a collection of diverse materials, and the screening of the materials for desirable performance characteristics and properties. The combinatorial approach can effectively evaluate much larger numbers of diverse compounds in a much shorter period of time. The apparatus taught by Kolosov et al includes a plurality of samples supported in wells on a substrate. Kolosov et al teach that the invention can be used to screen libraries of any flowable material that may be a commercial product itself or may be a portion of a commercial product. Exemplary commercial products that can be tested with the apparatus taught by Kolosov et al include lubricants and oils. The invention can be used to analyze the resulting properties of a particular flowing material, and to analyze the relative or comparative effects that an additive has upon a particular flowable material. Additives in a flowable material to be tested include a detergent, a flow modifier, etc. See paragraph nos. 0042-0043 in Kolosov et al. The screening for the effects of different additives upon the characteristics of a flowing material is performed by measuring various properties of the material samples present in the wells on the substrate. Properties measured include the viscosity, the density, the thermal degradation, the

aging characteristics, the chemical composition and the agglomeration or sedimentation of the material samples. See paragraph no. 0065 in Kolosov et al. Once the characterizing properties of the samples are determined, the results may be mathematically combined in various combinations to provide figures of merit for the properties of interest. See paragraph no. 0066 in Kolosov et al. The sample size of each sample in the wells on the substrate is typically no greater than about 20 ml, more preferably no greater than about 5 ml, and most preferred, no greater than about 0.5 ml. See paragraph no. 0054 in Kolosov et al. To form an array of samples on the substrate, Kolosov et al teach that the samples and additives are dispensed into the wells with any suitable dispensing apparatus (i.e. an automated micropipette or capillary dispenser). The dispensing apparatus may have a heated tip, thus providing heating of the samples. Each sample is dispensed to an individually addressable region in the substrate. See paragraph no. 0053 in Kolosov et al. The plurality of samples can vary in number depending upon the intended use of the method, and the plurality of samples can form a library. A library comprises an array of two or more different samples spatially separated on a common substrate. Candidate samples within a library may differ in a definable and predefined way, such as in chemical structure, processing, mixtures of interacting components, the relative amounts of the components, the presence of additives and other reactant materials, etc. The samples are spatially separated on the substrate such that an array of samples is separately addressable for characterization thereof. The two or more samples can reside in separate containers formed as wells in a surface of a substrate or can be simply dispensed onto a common planar substrate. See paragraph no. 0057 in Kolosov et al. The apparatus taught by Kolosov et al comprises a stimulus generator 12 that applies power to a probe 14 for applying a stimulus to one or more samples 16 in the array or library of samples.

The apparatus also includes a sensor or transducer 20 for monitoring a response of one or more of the samples 16 to the stimulus. The transducer 20 and the stimulus generator 12 are both in communication with a computer sub-system 23 such as a microprocessor or other computer for manipulating data. The computer sub-system 23 may be employed to receive and store data such as responses of samples 16, material properties of samples, etc. Additionally, the computer sub-system may be employed to command other components of the system such as the stimulus generator and the dispensing means, as well as to correlate responses of samples 16 to their respective material properties. See paragraph nos. 0067-0068 in Kolosov et al. The probe 14 may be translated, rotated, reciprocated or oscillated within the samples so as to mix the samples and subject them to different forces. See paragraph no. 0070 in Kolosov et al. For contacting the probe 14 and dispensing means with the samples 16, the samples may be moved relative to the probe 14, or alternatively, the probe 14 may be moved relative to the samples 16. Combinations of these motions may also occur serially or simultaneously. An automated system may be used to move the one or more probes and the dispensing means serially or simultaneously to the various samples of a library. A suitable automated system is a robotic system such as an XYZ robot arm that has a multiple axis range of motion such as in the orthogonal X, Y, and Z coordinate axes system. This automated system is part of or in communication with the computer sub-system 23. See paragraph nos. 0073-0074 in Kolosov et al. Kolosov et al also teach that a plurality of control samples having known material properties are also monitored in the libraries along with the samples so that the responses of the samples
can be compared with the known material properties of the controls. The responses of the samples in the library can be related to the known material properties by a mathematical

relationship. Kolosov et al fail to teach that the lubricants containing additives therein in the combinatorial array can be screened for oxidation stability by either determining the time required for a lubricant sample to consume a predetermined amount of oxygen or by measuring the amount of deposits formed by a lubricant sample exposed to oxidation reaction conditions.

O'Rear teaches that the oxidation stability of a lubricant oil sample can be determined by exposing the sample to an oxidative atmosphere, and determining the time required for the sample to adsorb one liter of oxygen. See paragraph nos. 0032-0033 in O'Rear.

Gatto teaches of a method for determining the oxidation stability of a lubricant oil composition by measuring the deposits formed by the sample under high-temperature thin-film oxidation conditions. See paragraph no. 0065 in Gatto.

Based upon the combination of Kolosov et al and either O'Rear or Gatto, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to screen the lubricant/additive compositions in the combinatorial array taught by Kolosov et al for oxidation stability since Kolosov et al teach that the plurality of samples in the array are screened for various material characteristics, and both O'Rear and Gatto teach that it is common to screen lubricating oil compositions for their oxidation stability by either determining the time required for a lubricant sample to consume a predetermined amount of oxygen or by measuring the amount of deposits formed by a lubricant sample exposed to oxidation reaction conditions.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kolosov et al in view of Perez et al. For a teaching of Kolosov et al, see previous paragraphs. Kolosov et al fail to teach that the lubricants containing additives therein in the combinatorial array can be screened for oxidation stability by using differential scanning calorimetry.

Perez et al teach that differential scanning calorimetry methods can be used to determine the oxidation stability of liquid lubricant compositions containing antioxidant additives therein. See lines 1-12 in column 9 of Perez et al.

Based upon the combination of Kolosov et al and Perez et al, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to screen the lubricant/additive compositions in the combinatorial array taught by Kolosov et al for oxidation stability since Kolosov et al teach that the plurality of samples in the array are screened for various material characteristics, and Perez et al teach that it is common to screen lubricating oil compositions for their oxidation stability by using differential scanning calorimetry.

5. Claims 7-8 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolosov et al in view of O'Rear or Gatto as applied to claims 1-6, 10 and 15-19 above, and further in view of McFarland et al (US Patent no. 6,541,271, submitted in the Information Disclosure Statement filed April 19, 2004). For a teaching of Kolosov et al, O'Rear and Gatto, see previous paragraphs. Kolosov et al fail to teach that the lubricants containing additives therein in the combinatorial array can be screened for oxidation stability by measuring the amount of deposits formed by a lubricant sample exposed to oxidation reaction conditions using Fourier-transform infrared spectroscopy.

McFarland et al teach of methods for screening diverse combinatorial arrays of materials by measuring the materials deposited on a transparent substrate using Fourier-transform infrared spectroscopy. This method is use to quantify the stability of the materials and characterize chemical reactions. See the abstract, lines 61-67 in column 15 and lines 1-9 in column 16 of McFarland et al.

Based on the combination of Kolosov et al, either O'Rear or Gatto and McFarland et al, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to screen the lubricant/additive compositions in the combinatorial array taught by Kolosov et al for oxidation stability for the reasons given above, and to further use Fourier-transform infrared spectroscopy to analyze the oxidation stability of the lubricant samples in the array since McFarland et al teach that Fourier-transform IR is an efficient and accurate means to quantify the stability of materials in a combinatorial array.

6. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolosov et al in view of O'Rear or Gatto as applied to claims 1-6, 10 and 15-19 above, and further in view of Smrcka et al (EP 1,233,361). For a teaching of Kolosov et al, O'Rear and Gatto, see previous paragraphs. Kolosov et al fail to teach that the results of testing the plurality of lubricating oil compositions can be stored in a data carrier or transmitted to a remote location.

Smrcka et al teach of a system and method for managing information pertaining to new product development. The method comprises the steps of testing a new chemical product, and storing the results in a data carrier such as a computer readable medium. All the data obtained through testing of a chemical product is stored in a central database. Remote access to the database is available globally from any personal computer having suitable client software installed and suitable network connectivity. See paragraph nos. 0011 and 0038 in Smrcka et al.

Based upon the combination of Kolosov et al, O'Rear or Gatto and Smrcka et al, it would have been obvious to one of ordinary skill in the art to store the results of testing the plurality of lubricating oil compositions taught by Kolosov et al in a data carrier that is available from a remote access site since Smrcka et al teach that it is advantageous to store the results of testing

for products being newly developed on a computer readable data carrier that is available from a remote access site in order to share and disseminate the information concerning the new product to anyone in the world researching that product.

7. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolosov et al in view of O'Rear or Gatto as applied to claims 1-6, 10 and 15-19 above, and further in view of Garr et al. For a teaching of Kolosov et al, O'Rear and Gatto, see previous paragraphs. Kolosov et al fail to teach that each of the individual test containers that hold the lubricant samples have a bar code attached thereto.

Garr et al teach that it is common in a combinatorial library of reaction products arranged in an array to have each individual reaction container identified by a unique code such as a bar code, which is optically readable. The code can also be stored in the memory of a digital signal processor on a database. See lines 3-10 in column 4 of Garr et al.

Based upon the combination of Kolosov et al, O'Rear or Gatto and Garr et al, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to label each of the individual test containers in the combinatorial array taught by Kolosov et al with a bar code since Garr et al teach that it is common in the combinatorial library art to uniquely label individual members of the library with a bar code so as to be able to identify and distinguish the samples and their unique characteristics from one another.

(10) Response to Argument

It is noted that Appellant's grouping of the claims on page 5 of the appeal brief is no longer required or appropriate for inclusion therein. It is also noted that the Examiner has performed a 35 USC 112, 6th paragraph analysis of independent system claim 15, and has found

that the receptacle moving means of part c) does not comply with the requirements of 35 USC 112, 6th paragraph, but that the means for measuring the oxidation stability recited in part d) does invoke 35 USC 112, 6th paragraph and therefore, the different means for measuring the oxidation stability of a lubricating oil composition disclosed in the instant specification are interpreted as being included within the scope of part d) of claim 15.

Appellants argue the rejection of the claims under 35 USC 103 as being obvious over Kolosov et al in view of O'Rear or Gatto by stating that the reference to Kolosov et al fails to teach a high throughput system and method for screening lubricating oil compositions, under program control, wherein the oil compositions specifically comprise a major amount of at least one base oil of lubricating viscosity and a minor amount of at least one lubricating oil additive. Appellants specifically argue that it is not inherent that a lubricating oil composition has to contain a major amount of at least one base oil of lubricating viscosity and a minor amount of at least one lubricating oil additive. However, an additive, by definition, means any substance incorporated into a base material, usually in a low concentration, to perform a specific function (i.e. a stabilizer, a preservative, dispersing agent, antioxidant, etc.). See page 20 of the Condensed Chemical Dictionary as an attachment hereto. Since Kolosov et al teach that a lubricant oil can be analyzed having an additive therein as one of the embodiments of the invention (see paragraph nos. 0042-0043 of Kolosov et al), and one embodiment of an additive in a composition is a substance incorporated into a base material in a low concentration, the teaching of Kolosov et al renders obvious the recitation in part a) of instant claims 1 and 15 reciting a major amount of at least one base oil of lubricating viscosity and a minor amount of at least one lubricating oil additive.

In further response to this argument, it is noted that the reference to Kolosov et al does teach of a high throughput system and method for screening lubricating oil compositions since the entire disclosure of Kolosov et al must be considered, even non-preferred embodiments. Kolosov et al teach of the general analysis of a large number of diverse compounds and that the compounds analyzed can be lubricants having an additive therein. See paragraph nos. 0042-0043 in Kolosov et al. Different lubricant compositions having additives therein are contained within test receptacles in an array or combinatorial library. Each of the test receptacles taught by Kolosov et al can contain a different lubricant composition since Kolosov et al teach that the candidate samples in a combinatorial array or library can differ from one another in a definable and predefined way, such as the amounts of components included within the composition, the types of additives included within the composition, etc. See paragraph no. 0061 in Kolosov et al. Kolosov et al also teach of measuring stability parameters of the different lubricant compositions such as thermal degradation parameters, aging characteristics and sedimentation of samples. See paragraph no. 0065 in Kolosov et al. Although a large number of different types of flowable samples are taught by Kolosov et al as being analyzed in a high throughput manner in a combinatorial library by measuring many different parameters, the fact remains that the disclosure of Kolosov et al does teach of the analysis of lubricant compositions having additives therein in a high throughput manner by placing many different types of the lubricant compositions in a plurality of receptacles, automatically moving the receptacles to locations for measurement of parameters and measuring many different parameters of the samples including those associated with the long-term stability of the compositions.

Appellants argue the rejection of the claims under 35 USC 103 as being obvious over the references to Kolosov et al, O'Rear and Gatto by stating that nowhere does Kolosov et al disclose or suggest the high throughput method of lubricant screening as recited in the instant claims, and that nothing in Kolosov et al would lead one skilled in the art to modify the system and method for testing the genera of flowable material with any of the broad tests disclosed therein and arrive at the specifically recited high throughput method for screening lubricating oil additive compositions as recited in the instant claims. In response to this argument, it is again noted that the entire disclosure of a reference is considered prior art. Therefore, since Kolosov et al disclose the analysis of lubricant compositions having additives therein as one of the flowable materials by measuring stability parameters such as thermal degradation, aging characteristics, viscosity and sedimentation of particles in the compositions in a high throughput combinatorial library format, one skilled in the art would be motivated to perform the method and apparatus as recited in the instant claims. The primary reference to Kolosov et al does teach of a high throughput method for screening lubricating oil additive compositions under program control since Kolosov et al employ the use of combinatorial chemistry and arrays for analyzing the material properties of flowable materials such as lubricants, and such combinatorial technology is "high-throughput". See paragraph no. 0004 where combinatorial chemistry is referred to as a "high-throughput synthesis and screening methodology", and paragraph no. 0023 where Kolosov et al state that the invention refers to "a materials characterization system that can operate as a high throughput screen in a materials science research program directed to identifying, characterizing or optimizing new or existing materials". The system and method taught by Kolosov et al is clearly automated as depicted in Figure 3 since it includes automatic means for

moving the samples to parameter testing stations or moving parameter measuring means to the different samples held in wells on a substrate. See paragraph nos. 0073, 0074 and 0089 in Kolosov et al that refer to an automatic apparatus 112 including a robot arm and an XYZ movable system.

Appellants argue that the reference to O'Rear fails to cure the deficiencies of Kolosov et al since O'Rear does not teach of a high throughput method for screening lubricating oil additive compositions, but rather, discloses blends of synthetic and non-synthetic lube base oils. Appellants argue that since the method taught by O'Rear is a non-automated test, and O'Rear does not teach of the automatic, high-throughput method under program control as recited in the instant claims, there is no motivation or suggestion to combine the teachings of Kolosov et al and O'Rear. In response to these arguments, it is noted that the primary reference to Kolosov et al teaches of a high throughout, automatic screening method and apparatus for screening a plurality of lubricant compositions, as noted above. The reference to O'Rear is used as a secondary teaching of the obviousness of measuring the stability of lubricant compositions containing additives therein by determining the oxidation stability of the composition with a measurement of the time required for the composition to adsorb one liter of oxygen. See paragraph nos. 0032-0033 in O'Rear. Based upon the combination of Kolosov et al and O'Rear, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to screen the lubricant/additive compositions in the combinatorial array taught by Kolosov et al for oxidation stability since Kolosov et al teach that the plurality of samples in the array are screened for various stability characteristics like thermal degradation, chemical composition, etc., and O'Rear teaches that it is common to screen lubricating oil compositions for their oxidation stability by

determining the time required for a lubricant sample to consume a predetermined amount of oxygen.

Appellants argue that the reference to Gatto fails to cure the deficiencies of Kolosov et al since Gatto does not teach of a high throughput method for screening lubricating oil additive compositions, but rather discloses non-automatic means for measuring organomolybdenum compositions. Appellants argue that since the method taught by Gatto is a non-automated test, and Gatto does not teach of the automatic, high-throughput method under program control as recited in the instant claims, there is no motivation or suggestion to combine the teachings of Kolosov et al and Gatto. In response to these arguments, it is noted that the primary reference to Kolosov et al teaches of a high throughout screening method and apparatus for screening a plurality of lubricant compositions, as noted above. The reference to Gatto is used as a secondary teaching of the obviousness of measuring the stability of lubricant compositions containing additives therein by determining the oxidation stability of the composition with a measurement of the deposits formed by the composition under high-temperature thin-film oxidation conditions. See paragraph no. 0065 in Gatto. Based upon the combination of Kolosov et al and Gatto, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to screen the lubricant/additive compositions in the combinatorial array taught by Kolosov et al for oxidation stability since Kolosov et al teach that the plurality of samples in the array are screened for various stability characteristics like thermal degradation, chemical composition, etc., and Gatto teaches that it is common to screen lubricating oil compositions for their oxidation stability by measuring the amount of deposits formed by a lubricant sample exposed to oxidation reaction conditions.

Appellants argue the rejection of the claims under 35 USC 103 as being obvious over Kolosov et al in view of Perez by stating that the reference to Perez does not cure the deficiencies of Kolosov et al since Perez does not teach of a high throughput method for screening lubricating oil additive compositions, but rather, discloses non-automated methods for analyzing stable high temperature liquid lubricant blends and antioxidant additives. In response to this argument, it is noted that the primary reference to Kolosov et al teaches of a high throughout screening method and apparatus for screening a plurality of lubricant compositions, as noted above. The reference to Perez is used as a secondary teaching of the obviousness of measuring the stability of lubricant compositions containing additives therein by determining the oxidation stability of the composition with differential scanning calorimetry methods. Based upon the combination of Kolosov et al and Perez et al, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to screen the lubricant/additive compositions in the combinatorial array taught by Kolosov et al for oxidation stability since Kolosov et al teach that the plurality of samples in the array are screened for various stability characteristics like thermal degradation, chemical composition, etc., and Perez et al teach that it is common to screen lubricating oil compositions for their oxidation stability by using differential scanning calorimetry.

Appellants argue the rejection of the claims under 35 USC 103 as being obvious over Kolosov et al in view of either O'Rear or Gatto, and further in view of Mcfarland, by stating that the reference to McFarland et al does not cure the deficiencies of Kolosov et al since Mcfarland et al do not teach of a high throughput method for screening lubricating oil additive compositions, but rather, disclose a method and apparatus for characterizing liquids by thermal

and infrared spectroscopic imaging. In response to this argument, it is noted that the primary reference to Kolosov et al teaches of a high throughout screening method and apparatus for screening a plurality of lubricant compositions, as noted above. The reference to McFarland et al is used as a secondary teaching of the obviousness of measuring the stability of compositions by determining the materials deposited on a transparent substrate using Fourier-transform infrared spectroscopy. Based on the combination of Kolosov et al, either O'Rear or Gatto and McFarland et al, it would have been obvious to one of ordinary skill in the art at the time of the instant invention to screen the lubricant/additive compositions in the combinatorial array taught by Kolosov et al for oxidation stability for the reasons given above, and to further use Fourier-transform infrared spectroscopy to analyze the oxidation stability of the lubricant samples in the array since McFarland et al teach that Fourier-transform IR is an efficient and accurate means to quantify the stability of materials in a combinatorial array.

Appellants argue that the reference to Smrcka et al does not cure the deficiencies of Kolosov et al, O'Rear and Gatto, and nowhere does Smrcka et al teach of a high throughput method for screening lubricating oil additive composition samples comprising the steps recited in the instant claims. However, as noted in the above paragraphs, the disclosure of Kolosov et al clearly teaches an automatic, high throughput method for screening multiple lubricating oil compositions that may contain additives. The secondary reference to Smrcka et al is used to show the obviousness of storing the results of testing products on a data carrier that is available from a remote access site so as to be able to share and disseminate information concerning new products to anyone in the world interested in or researching that product.

Appellants argue that the reference to Garr et al does not cure the deficiencies of Kolosov et al, O'Rear and Gatto, and nowhere does Garr et al teach of a high throughput method for screening lubricating oil additive composition samples comprising the steps recited in the instant claims. However, as noted in the above paragraphs, the disclosure of Kolosov et al clearly teaches an automatic, high throughput method for screening multiple lubricating oil compositions that may contain additives. The secondary reference to Garr et al is used to show the obviousness of including bar code labels on each of the sample receptacles in the combinatorial array taught by Kolosov et al so as to be able to identify and distinguish each of the samples and their unique characteristics from one another.

(11) Related Proceeding(s) Appendix

It is noted that Appellants have not included a heading in the appeal brief for an appendix concerning related proceedings outside of the PTO in accordance with Rule 37 CFR 41.37 (c). However, there are no related proceedings outside of the PTO that are related to the appeal in this application.

(12) Evidence Appendix

It is noted that Appellants have not included a heading in the appeal brief for an evidence appendix in accordance with Rule 37 CFR 41.37 (c). However, there is no other supplementary evidence that has been relied upon by Appellants in rebutting the rejections put forth by the Examiner.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Maureen M. Wallenhorst

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